Kesatuan Pekerja-Pekerja Perkilangan Perusahaan Makanan v F & N Dairies Manufacturing Sdn Bhd & Anor

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NO WA-25–197–10 OF 2016
AZIZAH NAWAWI J
21 FEBRUARY 2018

Civil Procedure — Judicial review — Application for — Trade dispute referred to Industrial Court — Industrial Court found in favour of respondent — Application for certiorari to quash award of Industrial Court — Whether there was ambiguity in award of Industrial Court — Whether retrospective order in breach of s 30(7) of the Industrial Relations Act 1967 — Industrial Relations Act 1967 s 30(7)

This was an application for judicial review by the applicant ('the union') against the first respondent ('the company') and the second respondent that was the Industrial Court seeking an order of certiorari to quash Award No 880 of 2016 dated 2 August 2016 given in Industrial Court Case No 3(1)/6–683 of 2016 ('the impugned award') and an order of mandamus directing the second respondent to issue an award which construed that the enforcement period for the 14th Collective Agreement ('the agreement') was from 1 May 2012–30 April 2015. A trade dispute arose between the applicant and the first respondent pertaining to the terms and conditions to be incorporated into the agreement encompassing the period of 1 May 2012–30 April 2015. The trade dispute was referred to the second respondent for determination following a ministerial reference pursuant to s 26(2) of the Industrial Relations Act 1967 ('the Act'). Prior to the hearing, it had been agreed by the applicant and the first respondent on 11 March 2013 that pursuant to article 3.1 of the agreement, the agreement shall be effective and binding on the parties with effect from 1 May 2012. Nevertheless, on 16 March 2016, the second respondent handed down Award No 288 of 2016 wherein it was held that the agreement shall have retrospective effect from 1 October 2013 for a period of three years ('the first award'). Subsequently, the applicant filed an application for the interpretation of the first award under s 33(1) of the Act for the purposes of removing the alleged ambiguity or uncertainty as to the effective date of the agreement. After hearing both parties, the second respondent had on 2 August 2016 handed down the impugned award whereby it was held that there was no ambiguity or uncertainty in the first award and thus, the second respondent's decision in the first award that the agreement is take effect from 1 October 2013 was affirmed. Hence this application for judicial review by the applicant.

Held, allowing the application:

(1) The restriction to award retrospectively pursuant to s 30(7) of the Act was only applicable where parties had not agreed on the effective date. In this case, the parties had agreed to the effective date in article 3 to be 1 May 2012 and that article 3 formed part of the first award. Therefore, the first award suffered from ambiguity when it made a retrospective order under s 30(7) of the Act. The Industrial Court made a finding that there was no ambiguity in the first award and thus had made an error of law in its interpretation of s 30(7) of the Act. Since the parties here had agreed that the effective date of the agreement was 1 May 2012, therefore s 30(7) of the Act was not applicable (see paras 29 & 33–34).

(2) The Industrial Court had committed an error of law in its interpretation and therefore part of the award, in respect of the effective date, was therefore quashed and that the effective date of the agreement was as agreed in article 3, that commenced on 1 May 2012–30 April 2015 (see para 35).

[Bahasa Malaysia summary

Ini adalah permohonan untuk semakan kehakiman oleh pemohon ('kesatuan') terhadap responden pertama ('syarikat') dan responden kedua iaitu Mahkamah Perusahaan bagi mendapatkan satu perintah certiorari untuk membatalkan Award No 880 Tahun 2016 bertarikh 2 Ogos 2016 yang diberikan di Mahkamah Perusahaan Kes No 3(1)/6–683 Tahun 2016 ('award yang dipersoalkan') dan satu perintah mandamus mengarahkan responden kedua untuk mengeluarkan satu award yang menyatakan bahawa tempoh berkuat kuasa bagi Perjanjian Bersama Ke-14 ('perjanjian') adalah dari 1 Mei 2012–30 April 2015. Pertikaian perdagangan timbul antara pemohon dan responden pertama yang berkaitan dengan terma dan syarat yang akan dimasukkan ke dalam perjanjian yang merangkumi tempoh 1 Mei 2012–30 April 2015. Pertikaian perdagangan tersebut dirujuk kepada responden kedua untuk penentuan berikutan rujukan Menteri menurut s 26(2) Akta Perhubungan Perusahaan 1967 ('Akta'). Sebelum perbicaraan, adalah dipersetujui oleh pemohon dan responden pertama pada 11 Mac 2013 yang menurut perkara 3.1 perjanjian itu, perjanjian tersebut akan berkuatkuasa dan mengikat kedua-dua pihak bermula 1 Mei 2012. Walau bagaimanapun, pada 16 Mac 2016, responden kedua menyerahkan Award No 288 Tahun 2016 dimana ia diputuskan bahawa perjanjian itu akan mempunyai kesan retrospektif dari 1 Oktober 2013 untuk tempoh tiga tahun ('award pertama'). Seterusnya, pemohon memfailkan permohonan untuk tafsiran award pertama di bawah s 33(1) Akta bagi tujuan menghapuskan keraguan atau ketidakpastian yang didakwa mengenai tarikh berkuat kuasa perjanjian tersebut. Selepas mendengar kedua-dua pihak, responden kedua pada 2 Ogos 2016 telah menyerahkan award yang dipersoalkan yang mana telah diputuskan tidak terdapat keraguan atau ketidakpastian dalam award pertama dan oleh itu

keputusan responden kedua dalam award pertama bahawa perjanjian tersebut berkuat kuasa dari 1 Oktober 2013 adalah disahkan. Oleh yang demikian, permohonan semakan kehakiman ini oleh pemohon.

Diputuskan, membenarkan permohonan:

(1) Pembatasan untuk award secara retrospektif menurut s 30(7) Akta hanya terpakai jika pihak-pihak tidak bersetuju dengan tarikh berkuat kuasa. Dalam kes ini, pihak-pihak telah bersetuju dengan tarikh berkuat kuasa dalam perkara 3 adalah 1 Mei 2012 dan perkara 3 tersebut menjadi sebahagian daripada award pertama. Oleh itu, award pertama mengalami keraguan apabila ia dijadikan perintah retrospektif di bawah s 30(7) Akta. Mahkamah Perusahaan membuat keputusan bahawa tiada keraguan dalam award pertama dan dengan itu telah membuat kesilapan undang-undang dalam mentafsir s 30(7) Akta. Memandangkan pihak-pihak telah bersetuju bahawa tarikh berkuat kuasa perjanjian tersebut adalah 1 Mei 2012, maka s 30(7) Akta adalah tidak terpakai (lihat perenggan 29 & 33–34).

(2) Mahkamah Perusahaan telah membuat kesilapan undang-undang dalam mentafsir dan oleh itu sebahagian daripada award tersebut, berkenaan dengan tarikh berkuat kuasa, adalah dibatalkan dan tarikh berkuat kuasa perjanjian tersebut adalah seperti yang dipersetujui dalam perkara 3, yang bermula pada 1 Mei 2012–30 April 2015 (lihat perenggan 35).]

Notes

For cases on application for judicial review, see 2(3) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 5937–5949.

Cases referred to

Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1947] 2 All ER 680, CA (refd)

Booi Kim Lee v Menteri Sumber Manusia & Anor [1999] 3 MLJ 515, HC (refd)

Council of Civil Service Unions and others v Minister for the Civil Service [1984] 3 All ER 935; [1985] AC 374, HL (refd)

Kumpulan O' Connor' s (M) Bhd v Mahkamah Perusahaan Malaysia and Ors [2010] MLJU 1124, HC (refd)

National Union of Hotel, Bar & Restaurant Workers v Casuarina Beach Hotel Sdn Bhd [1981] ILR Rep 345, IC (refd)

R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145, FC (refd)

Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd [2010] 6 MLJ 1; [2010] 8 CLJ 629, FC (refd)

Riviera Bay Resorts & Condo Management Sdn Bhd v Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar dan Restoran [2004] 2 ILR 326, IC (refd)

A *Sarawak Commercial Banks Association v Sarawak Bank Employees' Union* [1990] 2 MLJ 315, HC (folld)

Legislation referred to

Industrial Relations Act 1967 ss 26(2), 30(7), 33(1)

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VK Raj (P Kuppusamy & Co) for the applicant.
Sebastian Tay Hanxin (David Tan with him) (Lee Hishammuddin Allen & Gledhill) for the first respondent.

C **Azizah Nawawi J:**

APPLICATION

[1] This is the applicant's judicial review application seeking the following D prayers:

(a) an order of certiorari to quash Award No 880 of 2016 dated 2 August 2016 given in Industrial Court Case No 3(1)/6–683 of 2016 ('the impugned award') and that the enforcement period of the 14th Collective Agreement is from 1 May 2012–30 April 2015; and

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(b) aternatively, an order of mandamus directing the second respondent to issue an award which construes that the enforcement period for the 14th Collective Agreement is from 1 May 2012–30 April 2015.

F **[2]** The grounds of the application are:

(a) the second respondent had acted arbitrarily and/or in excess of jurisdiction and/or failed to take into account or give due weight to the relevant facts, and/or has considered and/or give due weight to the irrelevant facts;

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(b) the second respondent's decision is an error and cannot be used on the ground of *Wednesbury* unreasonableness;

(c) the second respondent had erred in law and had acted in excess of jurisdiction and/or without jurisdiction and had acted irrationally in arriving to the said decision when it failed to take into account and/or give due weight to the relevant matters; and

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(d) the second respondent made a decision that there was no ambiguity and uncertainty in the first award whereas both ambiguity and uncertainty existed in the first award.

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[3] Having considered the application and the submission of the parties, this court has allowed the application and quashed the Award No 880 of 2016 dated 2 August 2016 and ordered that the enforcement period of the 14th

Collective Agreement is from 1 May 2012–30 April 2015.

THE SALIENT FACTS

[4] The parties in this case are the applicant ('the union') and the first respondent ('the company'). The second respondent is the Industrial Court.

[5] A trade dispute arose between the union and the company pertaining to the terms and conditions to be incorporated into the 14th Collective Agreement encompassing the period of 1 May 2012–30 April 2015.

[6] There are 47 articles in the 14th Collective Agreement. Parties are on common ground that only nine articles are in dispute, whereas thirty nine articles have been agreed upon and thirty eight articles have been signed by both parties. One of the agreed article is article 3, which reads:

> 3.1 This Agreement shall be effective and binding on the parties with effect from 1st May 2012 and thereafter continue in force until superseded by a new collective agreement or award or unless terminated as provided therein.

[7] The trade dispute was then referred to the second respondent for determination following a ministerial reference pursuant to s 26(2) of the Industrial Relations Act 1967 ('the IRA 1967').

[8] Prior to the hearing, it has been agreed by the union and the company on 11 March 2013 that pursuant to article 3.1 of the 14th Collective Agreement, the agreement shall be effective and binding on the parties with effect from 1 May 2012. The agreed articles were signed by the parties and are attached as part of the award.

[9] Nevertheless, on 16 March 2016, the second respondent handed down Award No 288 of 2016 wherein it was held that the 14th Collective Agreement shall have retrospective effect from 1 October 2013 for a period of three years ('the first award'). The relevant part of the first award reads:

> Section 30(7) of the Act states that an award may specify the period during which it shall continue in force, and may be retrospective to such date as is specified in the award, provided that the retrospective date of the award may not be earlier than six (6) months from the date on which the dispute was referred to it. This dispute was referred by the Minister on 4 February 2014 and the period for the 14th CA from May 2012 to April 2015 has since lapsed. In accordance with section 30(7) of the Act, the court hereby orders that the effective date of commencement of the 14th CA be made retrospective to 1 October 2013 and it is for a period of three (3) years.

[10] Subsequently, the applicant filed an application for the interpretation of

the first award under s 33(1) of the IRA 1967 for the purposes of removing the alleged ambiguity or uncertainty as to the effective date of the 14th Collective Agreement.

[11] The union's complaint on the ambiguity or uncertainty is that there are two commencement date of the 14th Collective Agreement in the first award. In para 2 of the first award, it is stated that:

> The proposed 14th CA was meant for the period *from 1 May 2012* to 30 April 2015. There are a total of 47 Articles in the proposed CA wherein *38 Articles have been agreed upon and signed by the parties and are attached as part of this award* ... (Emphasis added.)

This is reiterated in para 66, which reads:

> Articles 9 and 36 which have been agreed prior to the hearing, *all undisputed Articles which have been signed by the parties and the annexure shall form part of this award*. (Emphasis added.)

[12] Therefore, premised on the above, since article 3 (on the commencement date of the 14th Collective Agreement, ie 1 May 2012) is an agreed article and duly signed by parties, and have been made part of the first award, then this would seem to contradict the conclusion in the first award that the commencement date shall be 1 October 2013.

[13] After hearing both parties, the second respondent (by a majority decision) had on 2 August 2016 handed down the Award No 880 of 2016 ('the impugned award') whereby it was held that there was no ambiguity or uncertainty in the first award and thus, the second respondent's decision in the first award that the 14th Collective Agreement is take effect from 1 October 2013 was affirmed. The said impugn award, inter alia, reads:

> [18] It is the majority voice of the honourable employer's panel member and the chairman of this court that there was no ambiguity in the said award, I had perused the articles in the proposed 14th CA read and considered the pleadings filed by the parties and the written submissions of learned counsels. I had also done research on the retrospective effect of an award under s 30(7) of the Act. Therefore, the said award was handed down after a considered and conscious effort without any error on my part, regardless of the alleged 'ambiguity' or para 2 and 66.
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> ...
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> [21] It is well within the confines of article 3.1 of the proposed 14th CA which was part of the agreed articles that the duration of the 14th CA could be superseded by an award of the court. That was exactly what this court was empowered to do in the said award when it ordered that the date of commencement of the then proposed 14th CA be made retrospective to 1 October 2013 only.

[22] Having considered all the above and acting in equity and good conscience, this court by a majority dismisses the applicant's application, there being no ambiguity or uncertainty to remove from the said award.

[14] Being aggrieved by the second respondent's decision dated 2 August 2016, the union filed this present action to challenge the said impugned award.

THE FINDINGS OF THE COURT

[15] This is an application to quash the majority decision of the Industrial Court which decided that there is no ambiguity in the first award that the commencement of the 14th Collective Agreement is 1 October 2013, instead of the parties' agreed date of 1 May 2012 under article 3 of the 14th Collective Agreement.

[16] In *Booi Kim Lee v Menteri Sumber Manusia & Anor* [1999] 3 MLJ 515, Justice KC Vohrah adopted Lord Diplock's classification of grounds of judicial review in the House of Lords case of *Council of Civil Service Unions and others v Minister for the Civil Service* [1984] 3 All ER 935; [1985] AC 374 ('the CCSU'). The three grounds described by Lord Diplock are:

(a) illegality;

(b) irrationality; and

(c) procedural impropriety.

[17] By illegality as a ground for judicial review, it means 'that the decision-maker must correctly understand the law that regulates his decision-making power and must give effect to it' and that '... the authority concerned has been guilty of an error of law in its action as for example, purporting to exercise a power which in law it does not possess' (see *Booi Kim Lee*/p 127/b-c).

[18] By irrationality it means '*Wednesbury* unreasonableness' and 'applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided upon could have arrived at it' (see *Booi Kim Lee*/p 127/g).

[19] By procedural impropriety, it includes 'failure by an administrative tribunal to observe procedural rules that are expressly laid out' and 'duty to act fairly' (see *Booi Kim Lee*/p 128/a-d).

[20] The above principles in *CCSU*'s case was also adopted by our Federal

Court in *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145.

[21] In *Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd* [2010] 6 MLJ 1; [2010] 8 CLJ 629, the Federal Court held as follows:

> The Federal Court, in *Petroliam Nasional Bhd v Nik Ramli Nik Hassan* [2004] 2 MLJ 288; [2003] 4 CLJ 625, again held that the reviewing court may scrutinise a decision on its merits but only in the most appropriate of cases and not every case is amenable to the *Rama Chandran* approach. Further, it was held that *a reviewing judge ought not to disturb findings of the Industrial Court unless they are grounded on illegality or plain irrationality,* even where the reviewing judge might not have come to the same conclusion. (Emphasis added.)

[22] In the present application, the union is mainly relying on the ground of illegality to challenge the impugn award of the Industrial Court.

[23] Under the heading 'illegality', Justice KC Vohrah in *Booi Kim Lee*'s case adopted two categories, namely 'ultra vires' and 'irrelevancy'. Ultra vires is when an authority concerned has been guilty of an error of law in its action, such as purporting to exercise a power which in law it does not possess or action in contrary to the policy and objects of the relevant statute. At p 127, it was held that:

> ... the decision maker must understand correctly the law that regulates his decision — making power and must give effect to it.

[24] It is the submission of the union that the Industrial Court has committed an error in law when the impugn award affirmed the first award which makes an order that pursuant to sub-s 30(7) of the IRA 1967, the effective date of commencement of the 14th Collective Agreement be made retrospective to 1 October 2013 and it is for a period of three years.

[25] It is not in dispute that both the union and the company have agreed that the 14th Collective Agreement is to be implemented from 1 May 2013 under article 3, which reads:

> 3.1 This Agreement shall be effective and binding on the parties with effect from 1st May 2012 and thereafter continue in force until superseded by a new collective agreement or award or unless terminated as provided therein.

[26] However, the Industrial Court made the said order in the first award, that is, the effective date of commencement of the 14th Collective Agreement be made retrospective to 1 October 2013, based on sub-s 30(7) of the IRA 1967, which reads:

30 Awards

(1) The Court shall have power in relation to a trade dispute referred to it or in relation to a reference to it under subsection 20(3), to make an award (including an interim award) relating to all or any of the issues.

...

(7) An award may specify the period during which it shall continue in force, and may be retrospective to such date as is specified in the award:

Provided that the retrospective date of the award may not, except in the case of a decision of the Court under section 33 or an order of the Court under paragraph 56(2)(c) or an award of the Court for reinstatement of a workman on a reference to it in respect of the dismissal of a workman, be earlier than six months from the date on which the dispute was referred to the Court.

[27] It is the submission of learned counsel for the company that the Industrial Court has not committed any error of law as the Industrial Court has complied with the law in sub-s 30(7) of the IRA 1967. It is not in dispute that under sub-s 30(7) of the IRA 1967, an award may specify the period and may be retrospective, but the retrospective date of the award may not be earlier than six months from the date on which the dispute was referred to the Industrial Court by the Minister under sub-s 26(2) of the IRA 1967.

[28] In the present case, the Minister had referred the dispute to the Industrial Court on 4 February 2014. Thus the retrospective date cannot be more than six months before 4 February 2014, that is 3 August 2013. Therefore, it is the submission of the learned counsel for the company that when the Industrial Court decided that the effective date of the 14th Collective Agreement is 1 October 2013, this is within the perimeter of s 30(7). Learned counsel for the company relied on the following cases:

(a) in *National Union of Hotel, Bar & Restaurant Workers v Casuarina Beach Hotel Sdn Bhd* [1981] ILR Rep 345, the Industrial Court Chairman held, inter alia, as follows:

> Be that as it may once the dispute is referred to us, the court is bound by the provisions of s 30(7) of the IRA which limits backdating to not more than six months from the date of reference by the Minister.

(b) in *Riviera Bay Resorts & Condo Management Sdn Bhd v Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar dan Restoran* [2004] 2 ILR 326, the union had argued that the collective agreement was to take effect from 1 January 2002–31 December 2004. The Industrial Court held that it could not order a retrospective date earlier than 23 November 2002 as this would be more than the six months after the ministerial reference date, that is 22 April 2003 and this would offend sub-s 30(7) of the IRA 1967.

[29] However, I am of the considered opinion and I agree with the decision of Justice Haidar in *Sarawak Commercial Banks Association v Sarawak Bank Employees' Union* [1990] 2 MLJ 315, that the restriction to award retrospectively pursuant to sub-s 30(7) of the IRA 1967 is only applicable where parties have not agreed on the effective date.

[30] In *Sarawak Commercial Bank Association*'s case, the parties had entered into a collective agreement relating to the terms and conditions of service for the period 1985–1987. When the agreement expired on 31 December 1987, the parties negotiated for a new collective agreement. Since the parties cannot conclude a new agreement, their dispute was referred to the Industrial Court by the Minister under s 26(2) of the IRA 1967. The parties have agreed on several terms, including article 2 which states that the effective date is 1 January 1988. When the award was handed down on 5 May 1989, the Industrial Court ordered that the award is to come into effect on the agreed affective date, that is, 1 January 1988. The issue before the court is whether the retrospective order is in breach of sub-s 30(7) of the IRA 1967. At p 316, the court said as follows:

> However, *Mr Varughese, counsel for the applicant, submitted that even though it is clear that the rest of the items that were agreed on are to be effective from 1 January 1988 but since article 19 (rates of pay) is a disputed item, the Industrial Court should not follow the agreed effective date to be applicable to the other disputed items. With respect, I do not see the logic of such an argument as article 2 (pertaining to the date of the coming into force of the agreement) is an agreed item and there is no qualification to article 2 at all.* In that event, in my view, *the implementation of all the articles in the agreement will have the same effective date.* The issue for me to consider is whether the retrospective order made by the Industrial Court is in breach of s 30(7) of the Act and if so whether such breach is an error of law or that error goes to jurisdiction, power or validity. (Emphasis added.)

[31] Justice Haidar then looked at sub-s 30(7) of the IRA 1967 and held that the word 'may' in this provision is not mandatory but discretionary. At p 317, His Lordship held:

> Section 30(7) of the Act reads:
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> > An award may specify the period during which it shall continue in force, and may be retrospective to such date as is specified in the award:
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> > *Provided that the retrospective date of the award may not*, except in the case of a decision of the court under s 33 or an order of the court under para 56(2)(c) or an award of the court for reinstatement of a workman on a reference to it in respect of the dismissal of a workman, *be earlier than six months from the date on which the dispute was referred to the court*. (Emphasis added.)
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> Mr Varughese, counsel for the applicant, urged the court to read the word 'may' as 'shall', thereby making sub-s 7 a mandatory provision and cited *Fung Keong Rubber Manufacturing (M) Sdn Bhd v Lee Eng Kiat & Ors* as the authority. But in my view

the reasons given by the Federal Court in *Fung Keong*'s case for the strict construction on the time-limit clause are inapplicable here for the Federal Court said at p 240:

> In our view the whole purpose of this part of the legislation is to provide workmen with a cheap and speedy remedy to obtain reinstatement. Quite clearly it would be extra-ordinarily difficult for employers to keep industry going if claims for reinstatement on the ground of wrongful dismissal could be made many months or years, instead of the statutory period of one month, after dismissal had taken place.

For myself I would read the word 'may' as discretionary and at most, directory and I say so for the following reasons:

> (a) The *restriction imposed on the power to make the award retrospectively is applicable only in respect of cases where the parties do not agree on the effective date of the agreement.* This is obvious as if the parties took time to settle the dispute on some substantial matters but agreed on the date of its implementation and thereby finally referred the dispute under s 26(2) of the Act to the Minister of Labour late, then the whole scheme will be defeated especially in view of the fact that this agreement is to be a continuation of the previous agreement. In my view this will be in conflict with s 30(5) which reads:
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> The court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form. (Emphasis added.)

[32] The same position was taken by Justice Aziah Ali in *Kumpulan O' Connor's (M) Bhd v Mahkamah Perusahaan Malaysia and Ors* [2010] MLJU 1124 where Her Ladyship held that s 30(7) of the IRA 1967 only applies where the parties cannot agree on the effective date of the new collective agreement. In para 10, it was held that:

> [10] Having considered the submissions and provisions of s 30(7), I agree with counsel for the applicant. *In my opinion, s 30(7) only applies where parties cannot agree on the effective date of the new CA.* I find no basis in the submission of counsel for the second respondent that s 30(7) applies only to new CA ie the first CA. To my mind where parties have provided in the existing CA or agreed during negotiation on the effective date of the new CA, then in such cases, there is no basis for the application of s 30(7). (Emphasis added.)

[33] In the present case, since the parties have agreed on the effective date in article 3 to be 1 May 2012, and that article 3 also forms part of the first award, then the first award suffers from ambiguity when the said award also made a retrospective order under sub-s 30(7) of the IRA 1967 that the implementation date of the 14th Collective Agreement is 1 October 2013.

[34] The ambiguity arose from the two dates of implementation in the first

award and that the retrospective effect of the award was backdated to 1 October 2013 pursuant to sub-s 30(7). Therefore, when the Industrial Court in the impugned award makes a finding that there was no ambiguity in the first award, the Industrial Court has made an error of law in its interpretation of sub-s 30(7) of the IRA 1967. Since the parties here have agreed that the effective date of the 14th Collective Agreement is 1 May 2012, therefore sub-s 30(7) of the IRA 1967 is not applicable.

[35] In the premise, I am of the considered opinion that the Industrial Court has committed an error of law in its interpretation and therefore part of the award, in respect of the effective date, is quashed and pursuant to *Rama Chandran*'s case, I ordered that the effective date of the 14th Collective Agreement is as agreed in article 3(1), that is 1 May 2012. Thus, the 14th Collective Agreement commenced on 1 May 2012 for a period of three years, until 30 April 2015.

Application allowed.

Reported by Nabilah Syahida Abdullah Salleh